

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

FCS CAPITAL, LLC, et al., . Case No. 2:20-cv-05580-CFK  
Plaintiffs, .  
v. . U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106  
JOSHUA L. THOMAS, ESQ., .  
Defendant. .  
February 8, 2021  
10:01 a.m.  
. . . . .

VIA TELECONFERENCE  
TRANSCRIPT OF RULE 16 PRETRIAL CONFERENCE  
BEFORE HONORABLE CHAD F. KENNEY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: LIONEL CAMILLO ARTOM-GINZBURG, ESQ.  
The Franklin  
834 Chestnut Street  
Suite 206  
Philadelphia, PA 19107

For the Defendant: JOSHUA LOUIS THOMAS, ESQ.  
JOSHUA L. THOMAS & ASSOCIATES, PLLC  
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Chadds Ford, PA 19317

Audio Operator: CARL HAUGER

TRANSCRIBED BY: NEAL R. GROSS

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recording, transcript produced by transcription service.

1 THE COURT: So, we're on the record. And this is the  
2 case of FCS Capital v. Joshua Thomas, and it's 20-5580.

3 So, counsel, I received your 26(f) report. Just a  
4 couple things. I don't do litigation by email, so, anything  
5 that you want to bring to my attention of a substantive matter  
6 needs to be done by -- needs to be done by motion. That's  
7 number one.

8 Number two, I have a proposed scheduling order here,  
9 and I have a trial date of October 15<sup>th</sup> at 9:00 o'clock. Okay?  
10 So, mark that on your calendar. That's a date certain. It's a  
11 Friday.

12 MR. THOMAS: Confirmed.

13 (Simultaneous speaking.)

14 THE COURT: Go ahead.

15 MR. THOMAS: Oh. Sorry, Your Honor. Just saying  
16 confirmed, that's it's on the calendar.

17 THE COURT: Fact discovery May 10<sup>th</sup>; expert reports  
18 for Plaintiff, June 7<sup>th</sup>; expert reports for Defendant, July 5<sup>th</sup>;  
19 expert discovery, August 5<sup>th</sup>; and summary judgment motions by  
20 September 6<sup>th</sup>. And then I lay out motions in limine right up  
21 to trial. I keep a strict calendar of those dates and ask  
22 that, as some of those dates approach, the law clerk will give  
23 you an email reminding you that we stick to those dates. Okay?

24 So, I guess, in reading the 26(f) reports, we'll  
25 start with the Plaintiff. Do you foresee any issues that I

1 should be aware of right now?

2 MR. ARTOM-GINZBURG: Yes, Your Honor. We -- I have  
3 contacted the insurance company that appears to have been in  
4 force at the time of the incident that brought the action. And  
5 they will not give me any information or a copy of the policy  
6 without a signed release from Mr. Thomas. And Mr. Thomas has  
7 not yet been forthcoming in providing such a release.

8 THE COURT: All right. Mr. Thomas, what about the  
9 insurance and the insurance information?

10 MR. THOMAS: I actually stated to opposing counsel  
11 that I'd be more than happy to turn over any requests he has in  
12 discovery. And that I just was not comfortable signing such a  
13 release because it -- what he had stated would seem too broad.  
14 So I said that if he has specific requests, he can send them as  
15 discovery requests. And after I stated that I received no  
16 further response.

17 THE COURT: All right. Mr. Thomas, who was your  
18 insurance company during the period of time and who is your  
19 insurance company now?

20 MR. THOMAS: So, there were two insurance companies  
21 involved. I sent him the earlier insurance companies. They  
22 were both through a broker named AFCO.

23 THE COURT: I'm asking for the insurance company.

24 MR. THOMAS: Right. I understand. What I'm saying  
25 is, the current insurance company was actually -- it was

1 through - it's called Affinity Insurance Services. And they're  
2 the ones who are currently in place. They were the ones who  
3 technically would have been handling it. The prior ones were  
4 technically called Aon, A-O-N.

5 THE COURT: All right.

6 MR. THOMAS: I believe they may be --

7 THE COURT: Well, Mr. Thomas, let me again get an  
8 answer from you, because you would have -- you have a policy.  
9 The policy is in your --

10 MR. THOMAS: Mm-hmm.

11 THE COURT: And I want to know who they placed the  
12 insurance with.

13 MR. THOMAS: Your Honor, I just said. It's Affinity  
14 Insurance is the one they would be currently with.

15 THE COURT: So you're -- no, but you told me they're  
16 a service, they're a brokerage. You did not tell me they are a  
17 -- that's who they placed your policy with.

18 Who do you have --

19 (Simultaneous speaking.)

20 THE COURT: Go ahead.

21 MR. THOMAS: Then I misspoke, Your Honor. Affinity  
22 is the current insurance company. There was also a broker who  
23 handled both insurance companies. Affinity is the current  
24 insurance company.

25 THE COURT: All right. And who's the broker?

1           MR. THOMAS: The broker has been through a company  
2 called Aon. It was who I've been --

3           THE COURT: Who is the name of the broker that you  
4 are working -- or that you worked with?

5           MR. THOMAS: It was Aon. I believe it's Aon -- I  
6 don't know if there's any further name of it. It's just simply  
7 Aon, was who I was working with.

8           THE COURT: All right. What's the phone number for  
9 the brokerage company, the broker?

10          MR. THOMAS: 617-457-7741.

11          THE COURT: And what is the person's name that you've  
12 dealt with there?

13          MR. THOMAS: I believe the most recent name was a  
14 Michael O'Connor.

15          THE COURT: And how do spell Aon?

16          MR. THOMAS: A-O-N.

17          THE COURT: And do you have an address on them, sir?

18          MR. THOMAS: Fifty-three State Street, Suite 2201.  
19 And that's Boston, Massachusetts, 02109.

20          THE COURT: All right. And what's your policy number  
21 for Affinity Insurance?

22          MR. THOMAS: The current policy number. Give me one  
23 second.

24          Sorry. One sec.

25          The policy number is AON2002180120.

1 THE COURT: Okay. A0N2002180120. Correct?

2 MR. THOMAS: The only correction I would make: I  
3 don't believe it's A-zero-N; I believe it's A, the letter O, N.

4 THE COURT: Oh, okay. A-O-N.

5 MR. THOMAS: Right.

6 THE COURT: Let me ask you, who was your immediate  
7 preceding insurance company to Affinity?

8 MR. THOMAS: Just a second.

9 MR. ARTOM-GINZBURG: It was Arch, Your Honor. Arch  
10 Insurance Company.

11 MR. THOMAS: Thank you. Yes, that's correct. It was  
12 through Aon and it was Arch was the predecessor.

13 THE COURT: And do we have a policy number under Arch  
14 Insurance Company?

15 MR. ARTOM-GINZBURG: I do, Your Honor. I have it,  
16 Your Honor.

17 THE COURT: Okay, so you have the policy numbers.

18 MR. ARTOM-GINZBURG: I do not have a copy of the  
19 policy. And I do not know whether a claim was made during the  
20 lifetime of the policy, which is a requirement, apparently,  
21 under their coverage. But they would not give me further  
22 information without a signed statement.

23 THE COURT: All right. So, Mr. Thomas, did you put  
24 either company on notice of a claim, or a potential claim?

25 MR. THOMAS: Yes. I put the second company on notice

1 of claim. Yes, Your Honor.

2 THE COURT: All right, Affinity. But you didn't  
3 notice Arch, right?

4 MR. THOMAS: Arch was not in place at the time that I  
5 knew this claim had occurred, so, no.

6 THE COURT: All right. And what's your -- what is  
7 your claim number? Did they give you a claim number or a  
8 claims adjuster for Affinity?

9 MR. THOMAS: I did not receive that information, Your  
10 Honor, no.

11 THE COURT: But you have an adjuster that talked to  
12 you, right?

13 MR. THOMAS: Yeah. That individual who I mentioned,  
14 Mr. O'Connor, was the adjuster I spoke with.

15 THE COURT: About the claim?

16 MR. THOMAS: Yes.

17 THE COURT: All right. And aren't they -- won't they  
18 provide you with defense, or what's going on with that?

19 MR. THOMAS: I did not receive a response regarding  
20 that. Last I reached out, I was told there would be more  
21 information coming to me. They had to speak with their  
22 attorneys. And I've received no information on it.

23 THE COURT: All right. So, the Defendant, you have  
24 plenty of information now to go ahead and subpoena the - to  
25 subpoena the files, right, on both?

1 MR. ARTOM-GINZBURG: Yes, Your Honor.

2 THE COURT: Okay. And so you'll take it from there  
3 in terms of your subpoena.

4 So, Mr. Thomas, they haven't denied the claim, have  
5 they, or reserved rights?

6 MR. THOMAS: No.

7 THE COURT: They just -- they're reviewing your  
8 claim. Correct?

9 MR. THOMAS: Correct. I did not receive any denial  
10 or anything stating such, Your Honor.

11 THE COURT: All right. Because the best way through  
12 this would be for somebody to come in and take over your  
13 representation for yourself, wouldn't it be?

14 MR. THOMAS: Most likely, yes, Your Honor.

15 THE COURT: All right. What other issues should I be  
16 aware of?

17 MR. THOMAS: If you'd like me to answer, Your Honor,  
18 or would you like Plaintiff's attorney?

19 MR. ARTOM-GINZBURG: I have no other issues, Your  
20 Honor. That was the only outstanding issue as of the moment.

21 THE COURT: All right. Well, let me go back to the  
22 Plaintiff [sic], then. What other issues are we looking at?

23 MR. THOMAS: Oh, I'm sorry, Your Honor. Did you want  
24 me to respond into what issues there may be?

25 THE COURT: Yes.



1           MR. THOMAS: Okay. So, in regards to outstanding  
2 issues, I would be looking to actually depose not just the  
3 Plaintiffs, but also Plaintiffs' attorney. I had actually  
4 mentioned this at a prior hearing but did not actually get the  
5 chance. I want to actually depose him in regards to what he  
6 actually informed them prior to representation or prior to  
7 filing this case. So, I'd be looking to depose him, as well.

8           THE COURT: And what's the defense response to that?

9           MR. ARTOM-GINZBURG: That was the defense, Your  
10 Honor. This is the Plaintiff. And I will be filing a motion  
11 for protective order because I think it's completely  
12 irrelevant, my position as to what I told my clients after  
13 taking over representation. This is a simple matter of a  
14 missed summary judgment motion.

15          THE COURT: Okay.

16          (Simultaneous speaking.)

17          THE COURT: Hold on a second. What about before  
18 taking over representation on this case. Did you consult with  
19 your client from the commencement of this action, 2018, through  
20 your entry of -- through your entry of appearance? Or did they  
21 contact you after this case was -- or after they had issues  
22 with this case?

23          MR. ARTOM-GINZBURG: I was contacted the last week of  
24 September of last year, after they became aware that much had  
25 gone on during the case that they were not aware of, including

1 multiple sanctions motions.

2 THE COURT: So, they --

3 MR. ARTOM-GINZBURG: I believe I --

4 THE COURT: Go ahead.

5 MR. ARTOM-GINZBURG: I believe I entered my  
6 appearance on October 1<sup>st</sup> or October 2<sup>nd</sup> of last year.

7 THE COURT: All right. October 2<sup>nd</sup> of what, 2020?

8 MR. ARTOM-GINZBURG: Of 2020. At which point the  
9 judgment was already there and collection proceedings had  
10 begun.

11 THE COURT: All right. October 2<sup>nd</sup> of 2020.

12 MR. THOMAS: And, Your Honor, I would respectfully  
13 say that that actually misstates quite a bit. And the entire  
14 purpose for me actually deposing Plaintiffs' counsel in regards  
15 to the --

16 THE COURT: Wait. Tell me exactly what it misstates?

17 MR. THOMAS: He completely leaves out the fact that  
18 the entire purpose of me actually seeking to depose him was an  
19 outstanding appeal of an actual motion to reconsideration that  
20 he instructed my client to have withdrawn in order to simply  
21 sue me, even though it had already been perfected and the  
22 briefs had actually already been filed. He instructed them  
23 that he was not going to be suing the appeal work because they  
24 hadn't paid him to do so, and they instructed them to tell me  
25 to withdraw it just so they could turn around and sue me.

1           THE COURT: Well, as to that limited access to that  
2 limited information, I may allow some discovery. We'll see  
3 what the motion for protective order has to do. But it may  
4 just go to his recommendations and why as to the merit, or lack  
5 of merit, that was filed on appeal of a motion for  
6 reconsideration. So, that, I may allow limited discovery as to  
7 that issue only.

8           Go ahead, counsel.

9           MR. THOMAS: I apologize, Your Honor. I'm on about a  
10 second delay. I don't mean to cut you off. But, yeah, that's  
11 specifically what we would be looking for. We wouldn't be  
12 looking for anything beyond that, and what stems from that, you  
13 know, set of questions.

14          THE COURT: All right. So, I don't know that there  
15 will be a protective order as to that set of questions. As a  
16 matter of fact, the counsel may even be able to give an  
17 affidavit on what was advised as to that motion and whether or  
18 not the reason that he said was wrong had anything to do with  
19 his not getting paid. So, that's how I'm giving you some  
20 insight into that question.

21          Now, from the Plaintiffs' point of view, any other  
22 issues right now that --

23          MR. ARTOM-GINZBURG: No, Your Honor. No, Your Honor.

24          THE COURT: From the defense point of view, any other  
25 issues?

1 MR. THOMAS: No, Your Honor. I think that summarizes  
2 it.

3 THE COURT: All right. So, the way I see the  
4 Plaintiffs' case, the Plaintiff -- what are the damages that  
5 you're -- the Plaintiff, what are your damages?

6 MR. ARTOM-GINZBURG: Well, initially, Your Honor, the  
7 damages are the \$54,000 judgment placed against the client.  
8 They were forced to pay \$7,500 in sanctions that were jointly  
9 severed with Mr. Thomas in order to clear the judgment.

10 Their business was completely shut down for a space  
11 of two and a half months as a result of the collection  
12 practice. And, as was stated on the record in the prior case,  
13 the clients were unaware of the judgment for nearly six months  
14 after it had been entered.

15 THE COURT: All right.

16 MR. THOMAS: Your Honor, I would say that's a slight  
17 misrepresentation of facts in several ways. But I could  
18 certainly brief the argument, as well, Your Honor.

19 THE COURT: So, in terms of the damages, right, what  
20 did you pay to -- what was paid to satisfy the judgment to get  
21 it off the record?

22 MR. ARTOM-GINZBURG: A little bit north of \$61,000,  
23 Your Honor.

24 THE COURT: All right. So 61,000, practically.  
25 Right? So, that's your 54 plus 7,500. So, \$61,000.

1 MR. ARTOM-GINZBURG: Yes, Your Honor.

2 THE COURT: And how do you shut -- and what period of  
3 time -- for what period of time was the business shut down?

4 MR. ARTOM-GINZBURG: The business was shut down from  
5 September until early December.

6 THE COURT: September of what, 2020?

7 MR. ARTOM-GINZBURG: Of 2020, until early December,  
8 yes.

9 THE COURT: And they couldn't operate why?

10 MR. ARTOM-GINZBURG: All of the bank accounts had  
11 been shut down. They had no ability to pay staff. They had no  
12 ability to pay contracts. They had no ability to do anything,  
13 both personal and business accounts.

14 THE COURT: All right. And that had nothing to do  
15 with the pandemic?

16 MR. ARTOM-GINZBURG: Nothing to do with the pandemic,  
17 Your Honor.

18 THE COURT: All right. And so how much are you  
19 saying they lost during that period of time?

20 MR. ARTOM-GINZBURG: We're still calculating that,  
21 Your Honor, because last year's taxes have not come due. I  
22 would imagine it would probably be in the vicinity of \$20,000  
23 to \$30,000.

24 THE COURT: All right. And what other damages are  
25 you looking for? So, it looks like you're looking for 61 plus

1 20 to 30, right?

2 MR. ARTOM-GINZBURG: Yes, Your Honor. There is also  
3 the question of monies that were paid to Mr. Thomas for  
4 representation that evidently was not provided.

5 (Simultaneous speaking.)

6 THE COURT: I'm sorry, I missed that. It was what?

7 MR. ARTOM-GINZBURG: Monies paid to Mr. Thomas for  
8 representation that evidently was not provided and was not  
9 answered in motion.

10 THE COURT: And how much was paid to Mr. Thomas?

11 MR. ARTOM-GINZBURG: I do not have those numbers in  
12 front of me. Those will be produced in discovery, Your Honor.

13 THE COURT: Your clients wouldn't know how much they  
14 paid Mr. Thomas?

15 MR. ARTOM-GINZBURG: My clients have a sense of how  
16 much they paid Mr. Thomas but they -- we don't have an exact  
17 number, Your Honor.

18 THE COURT: Mr. Thomas, do you know what they paid  
19 you all along this way? I guess you have records of that,  
20 right?

21 MR. THOMAS: I know that there is actually an  
22 outstanding balance of \$1,250 that they had agreed to pay and  
23 did not. Beyond that, I would argue that all payments made  
24 were not only earned, but there was actually a substantial  
25 discount provided for the services that actually were provided.

1 So we would contest any type of effort to claim that there was  
2 any outstanding balance. And, if anything, we may down the  
3 line, after discovery, have a counterclaim for outstanding  
4 fees, too.

5 THE COURT: So what did they pay you?

6 MR. THOMAS: I would have to double-check the records  
7 for the amount. But, as of right now, for the appeal that they  
8 have requested and agreed to, there is an outstanding balance  
9 of \$1,250. And for the actual fees paid for the initial case,  
10 I would have to confirm what that was, but it was certainly  
11 well below what services were actually provided.

12 THE COURT: All right. Well, the facts will be the  
13 facts. And sometimes you need an expert and sometimes you  
14 don't. I mean, there are certain things, certainly, as lawyers  
15 we all know must be done and that need to be done. And if  
16 they're not being done, they better be very, very well  
17 documented as to why they're not being done.

18 So, there are certain critical stages and critical  
19 documents, critical motions, critical discovery that is filed  
20 during the course of the case. And, certainly, that requires  
21 extremely good documentation if it's not being responded to,  
22 because we'll see, then, where the facts play out. Because  
23 it's one thing to say things and close, there's another thing  
24 to take a look at what the facts determine.

25 So, just keep that in mind as we move forward. So,

1 what I'm saying in terms of the insurance, I'm assuming that  
2 there's going to be discovery as to the insurance and the  
3 insurance coverage and when things were reported.

4 In terms of damages right now, I'm seeing -- what's  
5 being presented so far is the 61,000. The alleged loss of  
6 income, business income, from September to December.  
7 Certainly, that should be measured in light of any answers that  
8 were filed to -- answers were filed on the other record  
9 regarding collection.

10 And then you have the fees paid to Mr. Thomas.  
11 Certainly, fees being paid to Mr. Thomas are recoverable if Mr.  
12 Thomas is not doing a job within what would be expected and in  
13 terms of a reasonable degree of lawyer professionalism.

14 So, that's where we are. We will get a scheduling  
15 order out to you. Let's see. It looks like the magistrate on  
16 the case is Judge Lloret. He's very good. He'll reach out to  
17 you.

18 You know, unless there's insurance on the case, I  
19 don't see this case resolving. I see it going either through  
20 summary judgment or through a jury trial. I'm happy to do a  
21 jury trial. And I keep close tabs on my cases.

22 So, I think the first step is, Mr. Thomas, it would  
23 make it a lot easier if you would send authorization to counsel  
24 to get that information. But I can see that you're not looking  
25 to do that. And so I think counsel needs to subpoena those



1 records from the insurance companies. And then we'll take it  
2 from there. Make sure you file the proper process fees and pay  
3 the required witness fee if anything is needed.

4 Okay. Is there anything else, counsel for the  
5 Plaintiff?

6 MR. ARTOM-GINZBURG: No, Your Honor.

7 THE COURT: And is there anything else, counsel for  
8 the Defendant?

9 MR. THOMAS: Not right now, Your Honor. Thank you  
10 very much.

11 THE COURT: All right. Have a nice day.

12 (Whereupon, the above-entitled matter went off the  
13 record at 10:24 a.m.)

C E R T I F I C A T E

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



February 22, 2021

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Neal R. Gross

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